

Victim's Compensation Assistance Advisory Council Minutes

November 17, 2009
AG Conference Room
Carvel Building
Wilmington, Delaware

The Victim's Compensation Assistance Advisory Council held their first meeting in the AG Conference Room on November 17, 2009. Present at the meeting were:

Mona Bayard	Tom Ellis
Carolyn Becker	Stephanie Hamilton
LeVerta Bradford	Jeffrey Horvath
Barbara Brown	Mariann Kenville-Moore
Patti D'Angelo	Valerie Marek
Patti Dailey-Lewis	Deb Reed
Ann DelNegro	Gail Riblett
Dirk Durstein	Karin DuVall

Absent: Dr. Adrian Wilson and City of Wilmington Representative

Pat Dailey-Lewis called the meeting to order at approximately 1:00 p.m. Introductions were held by members of the Council and an introduction was given and members were greeted by Beau Biden, Attorney General.

Pat introduced Barbara Brown, Executive Director of VCAP, and Barbara welcomed all members and introduced the packet of information and explained the particulars, including the draft legislation, notice of next meeting date, draft copy of the new brochures, copy of H.S. 253, and the Joint Sunset Committee Interim Report on VCAP. Barbara stressed the importance of the Interim Report and the recommendations made within this report, particularly the first 8 pages. Barbara suggested to the members that the Advisory review these recommendations.

Barbara explained that the Victims Compensation Assistance Program (VCAP) will be submitting a report to the Joint Sunset Committee (JSC) by December 15th detailing the progress on implementing changes in response to the JSC recommendations. Barbara explained how this is carried over from last year and she will continue to be in contact with Debbie Puzzo regarding the changeover to VCAP. There was a discussion of

whether an Annual Report will be forthcoming. Barbara explained that last year the format was changed and the agency reported FY08 in June of FY09 for a variety of reasons. VCAP is working on getting FY09 data released perhaps by the end of this calendar year in the same format. In the past the VCCB was under the Administrative Office of the Courts (AOC), so their Annual Report included some VCCB information. Barbara is currently working with the same person who helped last year with the report.

A chart was included in the packet, and Barbara discussed the importance of this chart showing the increase in paid claims, up 36% over the FY09 with 30% more claims in Sept/Oct. Revenues in the first quarter were down slightly, and Barbara explained that was due mainly to reduced collection of restitution and fines. Barbara stated that VCAP has only been making benefit decisions officially since September 1st, 2009, even though in August the board was more flexible. The increase in paid claims to victims is already about 36% over the first quarter from last year. Barbara explained the figures in detail, laying out the budget process and how the funds are used and what is given back if not used by September 30th. \$500,000 was given out last year in federal grants, and this Spring VCAP should receive approximately and \$130,000 dollars in stimulus money. Anything over a \$6 Million balance in the VCF at the end of the fiscal year is returned to the general fund. As a result of that, last year \$379,000 was given back in the general fund because it was not spent. The year before it was \$50,000. Because we can use state or federal funds to pay victims' claims, VCAP is now doing it quarterly, rotating the funds that are used. Not as much was given in federal money last year (\$500,000), and this year the federal grant this Spring will be close to a million dollars. Of the federal money, 5% can be pulled out to fund administrative support.

Patti mentioned that Barbara and the staff are working very hard now on provide outreach to the community. We know now that the outreach is working because of the funds being paid out and the increase in claimants. Barbara thanked everyone for their support.

Barbara announced the newly established help desk in Family Court and thanked the attendees for their support in getting this established. It was mentioned that the help desk will start up next year in Kent County as well, and that VCAP Staff is on hand on Mondays now in Georgetown. It is working on Friday mornings on PFA day in NCC and VCAP is there assisting those folks. VCAP is going where the victims are. VCAP now has an investigator at the help desk on Mondays in Georgetown as part of the plan to be more accessible statewide.

Patti started the discussion regarding the selection of the new Chair for the Council. It was unanimously determined that the Council would wait for this selection at the next meeting.

Dirk Durstein introduced the Draft Regulations and explained the importance of rules and regulations to the Council. The draft Rules were thoroughly reviewed, and members as well as the public asked specific questions as to language, statute, procedures and overall definitions of each section. Dirk did a very thorough job with the assistance of Tom Ellis in explaining and changing as needed each section so that the interim regulations were satisfactory to the Council. Dirk stressed the importance of passing this document as Interim so that VCAP was adhering to the statute. This Rules and Regulations document can act as an interim framework until the vote on January 10th. The statute gives the Council full authority to address new rules and regulations.

The group discussed the three new entities created by the General Assembly under the amended statute: (1) the VCAP agency and staff; (2) the Advisory Council; and (3) the Appeals Board. Dirk explained the authority this Council has over rules and regulations, and how it can make changes. The four different types of changes proposed in the draft Rules are basically: 1) simple name changes (such as from VCCB to VCAP), 2) replacement of the Board authority with VCAP or Council; 3) dealing with substantive changes in the amended statute; and 4) establishment of new Rules to deal with recurring issues and to reflect past agency practice and policy. Dirk then explained the Rules in detail.

The members broke from discussion to be greeted by the Attorney General. The Attorney General thanked everyone for their hard work and service to the important Council. The Department of Justice is very happy to have VCAP housed under DOJ, and confident that under the direction of Patti, Barbara, Dirk and others that VCAP will work hard to increase the visibility and will make the Program more accessible to the public and confident that this will become one of the best programs in the Country. Special thanks were given to all members.

Patti then announced that VCAP should be up and running at their new location – the 4th floor of the Family Court Building on King Street in Wilmington - by the end of the year. Patti stated that she was very excited about the location and the vast amount of space for the public area for victims. This means VCAP can handle more forms, PFA's, Petitions for Custody, and work better with other outreach organizations. Patti stated that this newly formed VCAP would be "San Diego in Wilmington." Patti explained her coordination efforts with Bob Furman on obtaining the entire 4th floor and he appreciated their need for space.

Barbara also noted that she was very excited about the space on King Street and the helpline that will be centralized to the community. It was acknowledged that the Public Defender's office is located in that building as well.

The Attorney General then addressed the significance of holding offenders accountable for their crimes and getting the victims the service they so badly need. He expressed his gratitude to the General Assembly for recognizing this important issue and for giving the Department of Justice tools like those utilized by similar entities in other jurisdictions. This responsibility was given to the Department of Justice and as the Attorney General we embraced this and are very happy to take over this endeavor.

The meeting continued with a few questions from the members. Gail Riblett inquired about the Statute which states the amount of a claim and the procedure for appealing to the Board. Dirk went on to review the Rules and a discussion was held on the language. Dirk will make final changes on the document. The word (shall) was discussed and decided it would mimic the Statute in sub-section (a).

Following was an explanation of the process for an appeal by Dirk and how one can appeal to a Superior Court and then the Delaware Supreme Court. A discussion by members was held.

There were a few questions by the public who were present regarding Section 4 of the Rules (9.1) regarding when a hearing is being held and whether a person should only have 10 days notice. It was agreed the language would be changed from (hearing) dates and not (meeting) dates as this may be misleading.

One member of the public inquired about the victim claim – are there provisions for extensions. Barbara stated that VCAP currently does not use this guideline when making the sole determination for closing out a claim. There are times when a claim may go beyond 45 days. This was referenced in 12.2 of the Interim Rules. An example of medical reports from the providers being delayed was given. The concern was that this should not impact the claim from being barred after 45 days. Barbara stated this was not being used as a tool for denial of claims.

Barbara informed the Council that they currently are granting extensions. Dirk will take 90.10 language and insert into the Interim Rules.

It was suggested in Rule 12.3 to add “unless an extension is requested.” Dirk mentioned the Council may want to revisit this. If VCAP finds this creates a backlog, the Rules

may be changed back to 30 days. Barbara then mentioned H.B. 371 which states there is no time frame to open a claim.

The procedure for adopting these Rules were read by Tom Ellis. Dirk offered assistance to anyone that may want to request changes. He will be copying anyone who came to the meeting on the changes being made in response to comments and suggestions by the Council and the public. Another change noted was on Rule 14.2 stating the "Director" shall be the contact person when the claimant is not satisfied.

A brief discussion was given on Rules 14.3, 14.4 and 14.5 regarding the process for reopening a claim after 2 years. The Claimant does not have to start the process over after an initial award was given if there are additional submissions, i.e., locks need to be changed, medical costs. Dirk explained the new Rule stating narrow grounds whereby the Agency can reopen a claim that was previously denied. This may not affect many cases but gives the Agency more discretion.

Mona inquired about "excusable neglect." A brief definition was given. Also discussed was the word "innocent." It was asked to be stricken, but after discussion it was decided that possible amendment of the statute would have to be done to strike the word. The word "collusion" was also discussed as possibly needing to be removed from the statute in the future. Dirk expressed that the innocent language in this section was too broad and would be reviewed in Rule 15.1.

Rule 18.4. This language came from the Administrative Procedures Act. Rule 18.7 about issuing written opinions after an award is made in 90 days was discussed at length. Dirk stated this time frame is more than what the statute calls for. The idea was that a more detailed document would be produced if the Board was given more time; comparing the opinions of the UIAB board. Marianne expressed concern of this being a public document and using it for discovery in cases. Can this be a fact finding document and accessible to discover under FOIA? Tom and Dirk both agreed this was a very important question and would be researched.

Rule 19.3 Dirk explained the importance of *pro hac vice* bar admission for out-of-state lawyers who seek to represent victims or claimants before the Agency or the Board.

A lengthy discussion was held with Bryan regarding Rule 2.0 on the definition of "functioning" as it refers to disability and the Social Security definition. This may need statutory changes.

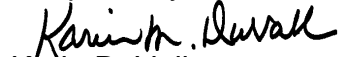
Rule 18.4 regarding individuals appearing before the board *pro se* was considered. A discussion was held and the Rules were revised.

Gail inquired whether or not a clause was needed for previous claims files, and whether a statutory change in the Rules will affect past claims. The members agreed this would only affect the claims going forward, as the effective date of the Interim Rules would apply. Section 90025(C) was read and stated that “the regulations may be retroactive as of August 30, 2009.”

A motion was made to adopt the Interim Rules with the changes reflected. The motion was seconded and it was accepted as unanimous and confirmed.

The meeting adjourned at 3:00 p.m.

Respectfully submitted,


Karin DuVall

